Supreme Court, U.S.
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No. 91-1115

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

VILLY DIERNISSE - PETITIONER

VS.

BUSINESS COMMUNICATIONS COMPANY, INC.

and LOUIS NATURMAN - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE U. S. CT. OF APP. (2d CIR.)

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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There is no parent or subsidiary company for the corporate defendant.

STANLEY J. YAVNER

QUESTIONS PRESENTED

1) Is the decision and judgment of the United States District Court for the District of Connecticut, by its Chief Judge, binding upon the parties herein and not subject to this or any other appeal or appellate consideration?

2) As to the questions presented by Petitioner, numbers 3)-11), should Petitioner be considered to have had his "day in court", since all such questions were presented to the lower courts (some on more than one occasion) and all such questions were decided against Petitioner in a binding, non-appealable decision?

3) Additional to the foregoing, does the recognition by the Mediation Panel of the important issue of "work for hire" and the consideration of that issue by the United States Supreme Court in the case of

Community for Creative Non-Violence v. Reid, 109 S.Ct. 2166 (1989), automatically compel consideration that joint ownership existed because of the end portion of that decision, which raised joint ownership as a possible factual alternative to "work for hire"?

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OPPOSITION TO PETITION

FOR WRIT OF CERTIORARI

Respondents, Business Communications Company, Inc. and Louis Naturman, respectfully oppose the petition for certiorari in this matter. The United States

District Court for the District of Connecticut conducted proceedings on Petitioner's complaint for almost eight years, and in 1991, with the consent of the parties herein, referred the matter for binding decision to a Mediation Panel (without right to appeal in the event of unanimity of the Panel), composed of a designee of Petitioner, a designee of Respondents and a designee of the Court.

In 1991, the United States District Court for the District of Connecticut entered its judgment upon the unanimous decision of the Mediation Panel in favor of Respondents. Notwithstanding the Order of the United States District Court establishing Mediation Panel schedules and rules removing the right of Appeal in the event of a unanimous decision of that Panel, Petitioner appealed to the United

States Court of Appeals for the Second Circuit; and upon motion of Respondents, the United States Court of Appeals for the Second Circuit dismissed the appeal.

THE PROCEEDINGS BELOW

Annexed as Appendix I hereto is the Order of the United States District Court for the District of Connecticut setting the schedule for, and the rules for, mediation, upon consent of the parties. Page 4 thereof, under the heading "Binding Mediation", Section 11.B. clearly sets forth that no right of appeal will be had by either party in the event of a unanimous determination by the Mediation Panel.

As is shown by Petitioner's Appendices No. 1, page 4 (APPENDIX B), the determinations and the decision of the

Mediation Panel were unanimous.

Nevertheless, Petitioner filed an Appeal to the United States Court of Appeals for the Second Circuit, which, as Petitioner admits, was dismissed upon motion of the present Respondent.

Now comes the Petitioner again to petition for a Writ of Certiorari before this Court, and such Petition should be rejected out of hand for the same reasons as dismissal was granted in the United States Court of Appeals.

ARGUMENT

Preliminarily, it is incumbent upon Respondent to set forth, with examples, that the Petition filed herein is a statement and chronology of misinformation and falsehoods to this Court.

In Petitioner's Statement of the Case, the statement of the contract

relating to the Retort is not true, in that there was no agreement of the parties that a payment of $1.50 extra per page for finished typing would be paid by Respondent. Accordingly, Respondent-Appellee did not want "to reduce the price" to $1.35 per page. Conversely, it was Petitioner-Appellant who wanted to increase the payment for typing from $1.35 per page to $1.50 per page. (See pages 4-6 of the Petition).

Page 7 of the Petition includes more misstatements. Respondent's Answer to the Substituted Complaint was not filed late, as related by Petitioner. Nor did Respondent drop its counterclaim in the Answer to the Substituted Complaint. Such outrageous claims were the subject of multiple, repeated motions, rejected out of hand by the Judge and the Magistrate.

(Petitioner's Appendix D and others).

Page 8 of the Petition includes a misleading statement by Petitioner, whereby the stipulated main issue for the Preliminary Injunctive hearings related to the "work-for-hire" doctrine, but now comes the Petitioner to state that the only issue "in this matter" is that doctrine.

Page 9 of the Petition indicates clearly that Petitioner's so-called conditions for agreeing to the binding mediation are no less than fraudulent. Petitioner admits that, in early 1990, he set forth conditions, including that allegedly missing information and documents during discovery be supplied. The Mediation Panel and the Court determined that such information and documents had already been supplied; and,

in fact, at no time did Petitioner ever argue that his conditions had not been satisfied for mediation. In further point of fact, after the Mediation Panel Order (Respondent's Appendix I), Petitioner filed his brief before the Mediation Panel, participated in framing issues for the Mediation Panel, argued before the Mediation Panel and did not bring up the subject of conditions until the unanimous opinion of the Mediation Panel against Petitioner was rendered. He wanted it both ways.

Page 14 and 15 of the Petition herein constitutes outright fraud. In those pages, Petitioner argues that he was limited to two hours to argue before the Mediation Panel and then characterizes that the proof presented was not sufficient to lead to a Mediation Panel

decision in favor of Respondent. It is absolutely fact that Mr.Diernisse was provided on May 21, 1991 and June 20, 1991, with in excess of eight hours of argument time at the hearing. It should also be of interest to this Court that the mediators, one of which had been chosen by Petitioner, would not cut off Petitioner's argument at the hearing until Petitioner stated his satisfaction that he had had enough time. To argue before this Court that only two hours were provided to Petitioner at the Mediation Panel hearing is outrageous fraud.

To move from page 15 to the end of the Petition and point out each and every falsehood would fill hundreds of pages, which are not worthy of the consumption of the time of this Court or Respondent. Petitioner characterizes proof during the

eight year ordeal before the Connecticut Federal Court as "tainted", supported by a "small amount of research material", representing Respondent's "cheating" and indicative of Petitioner's plea for costs.

Conversely, the relevant and material facts relating to the issue presented by this Petition can be concisely stated as follows: On January 14, 1991, the Mediation Panel issued its Order, which called for the setting up of a Mediation Panel, the submission of Mediation Memoranda, the presentation of evidence to such Panel and binding mediation in the event of unanimity. The Order was issued upon the agreement of the parties to the mediation.

The United States District Court for the District of Connecticut, on June 26, 1991, issued its Order upon decision of

the Mediation Panel, which was unanimous in favor of Respondent.

By way of background, the Honorable Court should understand the following circumstances. Defendants herein (Business Communications Company and Naturman) were subjected for eight years to the intentional infliction by Mr. Diernisse of great harm, inconvenience and expense. A few years ago, Mr.Diernisse embarked upon a scheme, whereby his counsel, without permission of the Federal District Court Judge, withdrew from the proceedings, enabling Mr. Diernisse to move forward pro se. Mr. Diernisse used his pro se status to get away with multiple and repeated motions every time he was thwarted by either the District Court Judge or the Magistrate. Upon information and belief, the undersigned

indicates with Rule 11 firmly in mind, that most of Mr. Diernisse's papers submitted after he became pro se, were in fact, written by an attorney. All of this was used by Mr. Diernisse to attempt to obtain sympathy and excuse for his repeated violations of proper procedure and courtesy. His main thrust was to cause unnecessary activity to the point where counsel fees were expended by Respondents in the amount of many tens of thousands of dollars, but without concurrent cost to Mr. Diernisse.

Mr. Diernisse had his day in court, and in fact, had his many days in court, over and over again. His expansion of the proceedings, his claimed ignorance of proper procedure and his moving forward with appeals, clearly denied by his own agreement, represents no less than

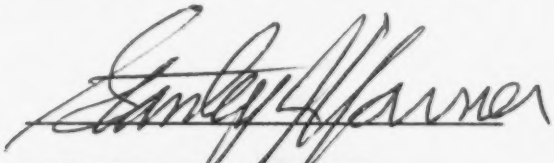
criminal conduct. Mr. Diernisse is now voluntarily retired (for the most part). He has used that status and his many hours of free time, with this case, since 1984 to wrongfully oppress Respondents into financial ruin, and to attemtp to "grab the brass ring". He has claimed millions of dollars in damage, while offering no proof, such as for "emotional distress". His claims are frivolous and malicious.

CONCLUSIONS

Instead of granting the Petition, the United States Supreme Court should, in its wisdom, order that a bill of costs and counsel fees should be submitted by Respondents for payment to, in some way, right the wrong that has been committed over the past eight years. Such relief is

earnestly and respectfully requested.

Respectfully submitted on February 3, 1992.



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CERTIFICATE OF SERVICE

I, STANLEY J. YAVNER, ESQ., of Suite 203, 120 North Main Street, New City, New York 10956, 914-638-3310, a member of the Bar of the Supreme Court of the United States, hereby certifies that three copies of the foregoing OPPOSITION TO PETITION FOR WRIT OF CERTIORARI and the annexed APPENDIX I were mailed by postage prepaid, first class mail, on the 3rd day of February, 1991 to:

Mr. Villy Diernisse
Pro Se Petitioner
5 Kaufman Drive
Westwood, New Jersey 07675
201-664-6222

Dated: Feb. 3, 1992

STANLEY J. YAVNER